IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 707 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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L T MATANG - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR NIRAV C THAKKAR for Petitioner(s) : 1,
MR DA DESAI, ASST. OVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/03/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order quashing and setting aside the order at Annexure A dated 4-1-1997 by which the petitioner came to be reverted to

the post of Deputy Executive Engineer (civil). The petitioner has also further prayed for an appropriate order directing the respondents to promote the petitioner to the post of Executive Engineer from the date of his immediate juniors figured in the seniority list of 1986 are promoted to the post of Executive Engineer.

2. Few facts are necessary for the purpose of determination of the present Special Civil Application.

Petitioner joined the service as Junior Engineer with the respondent in the year 1967 and was promoted as Deputy Executive Engineer in the year October 1977. Thereafter, by order dated 29-9-1993,ad hoc promotion was given to the petitioner as Executive Engineer and he was further continued on the said post by order dated 15-3-1994. That by order dated 4-1-1997, the respondent no.2 passed an order reverting the petitioner back to the post of the Deputy Executive Engineer and withdrew the order of promotion to the post of Executive Engineer and therefore, the petitioner has preferred the present

Special Civil Application under Article 226 of the Constitution of India.

3. Shri Nirav Thakkar, learned advocate appearing on behalf of the petitioner has submitted that the impugned order dated 4-1-1997 is against the provisions contained in the Government resolution dated 2-4-1983 and 30-10-1993. It is submitted by him that in the year 1988 when the sealed cover procedure was followed as per the Government resolution dated 2-4-1983, there was no charge sheet served upon the petitioner dated 5-9-1991. That even though the inquiry was contemplated at the time when sealed cover procedure was followed, there were only two charge sheet pending when the sealed cover procedure was followed and they were the charge sheets dated 8-7-1984 and 21-8-1985 and in connection with both the charge sheets, inquiry was over in the year 1991 and after the inquiry was over, the petitioner was given ad hoc promotion. It is submitted by him that in fact in the year 1988 itself, the petitioner should have been given regular promotion with deemed date i.e. the date his immediate juniors figured in the

seniority list of 1986 are promoted to the post of Executive Engineer. It is submitted that despite this being the position, the petitioner was given the promotion in the year 1993. It is submitted that even the said promotion is also withdrawn on flimsy ground. It is submitted by him that as per the Government resolution of 1983 after following the sealed cover procedure, if two years have been passed and if still the inquiry is pending, the concerned employee should be given ad hoc promotion and in spite of that the petitioner was not given ad hoc promotion after two years. It is submitted by him that minor punishment of stoppage of one increment without future effect was imposed upon him by order dated 30-11-1994 and the petitioner had already undergone the said punishment and therefore, there was no necessity for the respondents to issue the impugned order dated 4-1-1997. It is submitted that the impugned order is an order of reversion of the petitioner and hence it is punishment. It is submitted that thus for the charge sheet dated 5-9-1991, two punishment have been imposed upon the petitioner by two orders dated 30-11-1994 and 4-1-

1997 being punishment of stoppage of one increment without future effect and the punishment of reversion from the post of Executive Engineer to the post of Deputy Executive Engineer. Thus, the impugned order suffers from the vice of double jeopardy. Therefore, it is requested to allow the present Special Civil Application by quashing and setting aside the impugned order dated 4-1-1997. No other submissions have been made.

4. On the other hand Shri DA Desai, learned AGP while opposing the present Special Civil Application has submitted that at the time when order dated 29-9-1993 was passed and the petitioner was given the ad hoc promotion to the post of the Executive Engineer, the departmental inquiries inclusive of the departmental inquiry dated 5-8-1991 were pending and in the order of ad hoc promotion itself, it has been mentioned that if in the pending departmental inquiries, the petitioner is not exonerated fully in that case, the ad hoc promotion to be brought to an end and the petitioner would be reverted to the post of the Deputy Executive Engineer. It is submitted

that thereafter when on conclusion of the departmental inquiry dated 5-8-1991 when by order dated 30-11-1994, the petitioner was found to be guilty and was imposed punishment of withholding of one increment without future effect, the petitioner was required to be reverted to the post of the Deputy Executive Engineer considering the order dated 29th September 1993 and therefore, when the petitioner having held guilty in the departmental inquiry is reverted to the post of the Deputy Executive Engineer, it cannot be said that there is any illegality committed by the respondents. It is submitted that the impugned order dated 4-1-1997 reverting the petitioner from the post of the Executive Engineer to the post of Deputy Executive Engineer is not by way of punishment but it was considering the order of promotion dated 29-9-1993. Therefore, there is no question of double jeopardy as contended on behalf of the petitioner. It is submitted that in fact the ad hoc promotion was given to the petitioner considering the Government resolution dated 2-4-1983 which was subsequently modified in the year 1993. It is also further

submitted that even the order of reversion is in consonance with the Government resolution dated 2-4-1983 which has been relied upon by the petitioner in support of his case. It is also further submitted by him that even considering the fact that when the sealed cover procedure was adopted in the year 1988, there were two departmental inquiries pending against the petitioner, one was with regard to charge sheet dated 18-4-1984 and even with regard to the same, the petitioner was held guilty and all the charges levelled against the petitioner were considered and the petitioner was imposed the punishment of censure. Therefore, considering the order of ad hoc promotion dated 29-9-1993 and when the petitioner was not exonerated fully in the pending departmental inquiries and after holding the petitioner guilty and imposed the punishment when the petitioner is reverted to the post of the Deputy Executive Engineer considering the order of ad hoc promotion dated 29-9-1993, there is no illegality committed by the respondents. Therefore, it is requested to resume the present Special Civil Application.

5. Heard the learned advocate appearing on behalf of the parties.

6. It is required to be noted that there were two charge sheets issued against the petitioner at the relevant time dated 21-8-1985 and 18-7-1984, when the case of the petitioner came to be considered for promotion along with his juniors and in view of the aforesaid charge sheets, sealed cover procedure was adopted in the year 1988. Considering the Government resolution dated 2-4-1983 as the departmental inquiries were not concluded, the case of the petitioner was considered for ac hod promotion and therefore, by order dated 29-9-1993, the petitioner came to be promoted on ad hoc basis to the post of Executive Engineer and one of the condition was that if in the pending departmental inquiries, if the petitioner is not exonerated fully, in that case, the ad hoc promotion would be cancelled and the petitioner would be reverted to the post of the Deputy Executive Engineer. It is required to be noted that at the relevant time when the order of ad hoc promotion dated 29-9-1993 was passed over and above

the aforesaid two departmental inquiries, in the meantime, one another inquiry vide charge sheet dated 5-8-1991 was also issued and the petitioner has been held guilty for the charges levelled vide charge sheet dated 18-7-1984 as well as charge sheet dated 5-8-1991. So far as the departmental inquiry with regard to charge sheet dated 18-7-1984 is concerned, the petitioner was imposed the punishment/penalty of censure and so far as the charge sheet dated 5-8-1991 is concerned, the punishment of withholding of one increment has been imposed. Thus, the petitioner is not exonerated fully. Not only that but the petitioner is held guilty and is imposed the punishment. Thus, considering the order of ad hoc promotion dated 29-9-1993 when the petitioner is not exonerated fully and on the contrary punished and considering the condition provided under the order of ad hoc promotion dated 29-9-1993 (which has been accepted by the petitioner) and when the petitioner is reverted to the post of Deputy Executive Engineer, it cannot be said that there is any illegality committed by the respondents in reverting the petitioner to the post of the Deputy Executive

Engineer. The order of reversion of the petitioner to the post of the Deputy Executive Engineer is in consonance with the order of ad hoc promotion dated 29-9-1993.

7. Even considering the Government resolution dated 2-4-1983 which has been relied upon by the petitioner even considering clause 6, if the officer concerned is not acquitted/exonerated in the Court proceedings or the departmental proceedings, the ad hoc promotion already granted should be brought to an end by issuance of further order contemplated in the order of ac hoc promotion and the officer concerned is to be reverted to the post from he was promoted on ad hoc basis and after such reversion, the officer may be considered for future promotion in the usual course by the next departmental promotion committee. Thus, even the aforesaid Government resolution also provides that if the officer is not exonerated in the departmental inquiry, his ad hoc promotion is required to be brought to an end and he is required to be reverted.

8. Now, so far as the contention on behalf of the petitioner that with respect to charge sheet dated 5-8-1991, the petitioner has already been punished by imposing the punishment of withholding of one increment and the same is implemented and the petitioner has already undergone the said punishment and therefore, the order of reversion would be double jeopardy, first of all it is required to be noted that the impugned order of reversion dated 4-1-1997 is not by way of punishment. The impugned order dated 4-1-1997 is in consonance with the order of ad hoc promotion dated 29-9-1993 and on holding the petitioner guilty, meaning thereby not exonerating in pending departmental proceedings. Therefore, it cannot be said that there is a double punishment and/or double jeopardy. Order of reversion has nothing to do with the departmental inquiry. The impugned order is considering the condition imposed while granting the ad hoc promotion. Therefore, the contention on behalf of the petitioner that there will be double punishment and double jeopardy cannot be accepted and has no substance.

9. For the reasons stated above, it cannot be said that the impugned order dated 4-1-1997 is in any way illegal and/or arbitrary and or contrary to the Government resolution. On the contrary, the impugned order dated 4-1-1997 is in consonance with the order of ad hoc promotion dated 29-9-1993. Under the circumstances, the petition fails and it is dismissed. Rule discharged. No costs.

(M.R. SHAH, J.)

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